

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

MICHAEL SHANE STEPHENS,
Plaintiff,

VERSUS CIVIL ACTION NO: 1:07cv96LG-JMR

HARRISON COUNTY, MISSISSIPPI;
SHERIFF GEORGE H. PAYNE, JR.;
AND UNKNOWN OFFICERS IN THEIR
INDIVIDUAL AND OFFICIAL
CAPACITY,
Defendants.

DEPOSITION OF JAMES B. ESPOSITO

Taken at the offices of Gex & Artigues,
833 Highway 90, Bay St. Louis,
Mississippi, on Tuesday, April 1, 2008,
beginning at 2:30 p.m.

APPEARANCES:

GLADYS LOFTON, ESQUIRE
Law Office of LaQuetta Golden
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Gulfport, Mississippi 39503
ATTORNEY FOR PLAINTIFF

JOE C. GEWIN, ESQUIRE
Dukes, Dukes, Keating & Faneca, P.A.
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ATTORNEY FOR SHERIFF GEORGE PAYNE

1 APPEARANCES: (Continued)

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8 REPORTED BY:

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T-A-B-L-E O-F C-O-N-T-E-N-T-S

Examination by:Page

Mr. Gewin

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Ms. Lofton

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Mr. Gewin

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Stipulation

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Certificate of Reporter

18

Errata Sheet

19

STIPULATION

It is hereby stipulated and agreed by and between the parties hereto, through their respective attorneys of record, that this deposition may be taken at the time and place hereinbefore set forth, by F. Dusty Burdine, Court Reporter and Notary Public, pursuant to the Federal Rules of Civil Procedure, as amended;

That the formality of **READING AND SIGNING** is specifically **NOT WAIVED**;

That all objections, except as to the form of the questions and the responsiveness of the answers, are reserved until such time as this deposition, or any part thereof, may be used or is sought to be used in evidence.

- - -

1 MR. GEWIN:

2 Before I ask any questions, for the
3 record, this deposition is taken by agreement of
4 the parties and pursuant to the Federal Rules of
5 Civil Procedure.

6 Do you agree to reserve the objections,
7 except as to the form of the question and
8 responsiveness of the answer?

9 MS. LOFTON:

10 Correct.

11 JAMES ESPOSITO

12 having been first duly sworn, was examined
13 and testified as follows:

14 EXAMINATION

15 BY MR. GEWIN:

16 Q. Would you state your name for the
17 record, please.

18 A. James Esposito.

19 Q. What is your position now?

20 A. Lieutenant within our department,
21 narcotics.

22 Q. What department now?

23 A. Hancock County Sheriff's Office.

24 Q. How long have you been with the Hancock
25 County Sheriff's Office?

1 A. Sixteen years.

2 Q. All right. We're here on an incident
3 that occurred on February 5th, 2004. Do you
4 recall that event, the car chase?

5 A. Yes, sir.

6 Q. What was your job duty on February 5th,
7 2004?

8 A. At that time, I would have been, I
9 think, supervisor on shift.

10 Q. Were you on patrol that evening?

11 A. Yes, sir.

12 Q. Do you recall getting a call for
13 assistance from any other police office?

14 A. Harrison County was in pursuit of a
15 vehicle.

16 Q. Okay. Will you just kind of lead us
17 through what happened? My understanding is this
18 was the evening around 11:00 p.m., February 5th,
19 2004; is that your understanding?

20 A. Yes, sir.

21 Q. Okay. Can you just kind of lead us
22 through where you picked up and got the call for
23 assistance, where you were located and what you
24 saw?

25 A. I don't recall exactly where I was

1 sitting, but I do know that I did take lead car
2 and was in pursuit of the suspect vehicle.

3 Q. Do you know what the vehicle driver was
4 first lit up for?

5 A. All I knew is that it was a stolen
6 vehicle, that they were in pursuit of a stolen
7 vehicle.

8 Q. Okay. So were you the immediate pursuit
9 directly behind the fleeing vehicle?

10 A. As it came into Hancock County.

11 Q. Okay. How long did you chase it through
12 Hancock County, how much time or how many miles,
13 approximately?

14 A. Let's see. At least 12 miles.

15 Q. What speeds did the driver in front of
16 you approach as you chased him?

17 A. I don't recall.

18 Q. Was it a fairly high-speed chase?

19 A. Yes, sir. Over the speed limit.

20 Q. Was there any other vehicles following
21 you in this parade of vehicles?

22 A. Yes, sir.

23 Q. Who all else was in that line of cars
24 behind you?

25 A. It would have been Hancock County

1 deputies and Harrison County deputies.

2 Q. Do you know the names of the Hancock
3 County deputy car that would have been involved in
4 the pursuit with you in another vehicle?

5 A. Yes, sir.

6 Q. Who was that?

7 A. Deputy Danny Gilkerson.

8 Q. And was Mr. Gilkerson in his vehicle by
9 himself?

10 A. Yes, sir.

11 Q. You didn't have any passengers either?

12 A. No, sir.

13 Q. Okay. Kind of tell us what happened as
14 the chase progressed in Hancock County.

15 A. As we approached the two-mile marker --
16 and I'm not sure which deputy did it, but we spike
17 stripped the vehicle. After that, the vehicle
18 moved down to the right -- to the right side of
19 the median. I followed. And as we came to a
20 rest -- as he came to a rest, I stopped. And when
21 I went to try to stop, I slid into his vehicle,
22 pressing the door forward on his vehicle.

23 Q. When you say "median," do you mean the
24 right-hand shoulder?

25 A. Well, it's kind of a median, I guess.

1 It's not just right off the shoulder. It's all
2 the way down into the ditch and up by the wood
3 line.

4 Q. Okay. We're not talking about the
5 median between the roads?

6 A. No.

7 Q. We're talking --

8 A. To the right.

9 Q. -- right-hand shoulder?

10 A. Yes.

11 Q. Okay. And as you hit the brakes, I
12 understand you skidded, and you skidded kind of
13 and side swiped the driver in front of you?

14 A. Correct.

15 Q. What happened the moment you impacted?

16 A. As he opened his door and I hit his
17 door, he came out and went over the front of my
18 vehicle.

19 Q. Okay. And then what happened?

20 A. Then I got out of my vehicle. And as I
21 went to the rear part of the vehicle, he was gone.
22 I then followed him into the woods to look for
23 him.

24 Q. Did anyone go with you to help you look?

25 A. No. I don't remember. I was by myself.

1 Q. Okay. And then what happened?

2 A. As we went into the woods, you couldn't
3 see, so I grabbed my flashlight and was looking
4 around. And I found him. He was trying to
5 negotiate a fence that was about 15 yards inside
6 the wood line.

7 Q. What kind of fence?

8 A. It's a mixed barbed wire. Like a -- I
9 don't know what you would call that.

10 Q. A hog wire?

11 A. Yeah. Like you would find on a farm,
12 the square stuff with the barbed wire across the
13 top of it.

14 Q. And when you say "we," would that
15 include the driver of the fleeing vehicle and
16 yourself?

17 A. Correct.

18 Q. And describe for us when you put the
19 flashlight on the person, what did you see?

20 A. I saw him trying to fight to get over
21 the fence.

22 Q. Was he halfway over it or --

23 A. Yes, sir.

24 Q. -- tangled in it or what?

25 A. Yes, sir. He was -- he was trying to

1 get over the top of it.

2 Q. He didn't have a flashlight, did he?

3 A. No, sir.

4 Q. Did he appear to have been harmed by the
5 barbed wire fence; could you tell at that time?

6 A. All I know is that he was -- he was
7 wrapped up in the fence trying to get over it. He
8 was trying to get through it.

9 Q. What happened as you approached him?
10 Did you identify yourself?

11 A. Yeah. As I saw him, I gave out my K-9
12 warnings. And as I did, he went over the fence.
13 He tried to get back up. I yelled at him again my
14 K-9 warnings, and he gave up.

15 Q. When you say your K-9 warnings, did you
16 have a dog with you?

17 A. No. I am a K-9 officer, but my dog was
18 sick and I did not have him with me.

19 Q. But you said "sick him" anyway; is that
20 right?

21 A. I told him to stop or I was going to
22 send my K-9.

23 Q. So it worked just as well as if you had
24 a dog with you, right?

25 A. Yes, sir.